

Nadler Presses for Accountability for Torture Committed During Bush Administration

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WASHINGTON, D.C. — Today, after careful review of the Department of Justice's Office of Professional Responsibility (OPR) report, Congressman Jerrold Nadler (D-NY), chair of the House Judiciary Subcommittee on the Constitution, Civil Rights and Civil Liberties, expressed his strong disappointment that referral of OPR's findings of "misconduct" by former Office of Legal Counsel attorneys Jay Bybee and John Yoo were blocked by apparent disagreement within the Department of Justice regarding appropriate standards of conduct for its attorneys. While OPR concluded that Bybee and Yoo — the attorneys who authored the notorious "torture memos" that paved the way for approval of waterboarding during the Bush administration — committed professional "misconduct" in rendering those opinions, Associate Deputy Attorney General David Margolis asserted that the attorneys displayed only "poor judgment" and refused to authorize a referral of the matter to the state bars for further disciplinary action. Nadler renewed his call for accountability for torture authorized and committed during the Bush administration. In response to the Department of Justice's inaction, he has also forwarded copies of the OPR report and other relevant materials on Bybee and Yoo to their state bar associations — in the District of Columbia and Pennsylvania, respectively — for review.

"The perversion of our laws and treaty obligations in order to support an illegal campaign of torture is a stain on the honor of our nation," said Nadler. "I am proud that President Obama has returned this nation to its longstanding commitment never to engage in torture. Nonetheless, it is important that those who committed these misdeeds be made to answer for their actions. As before, it is imperative that the Department of Justice ensure that a special counsel fully investigates the commission of torture, to follow the trail wherever it goes, and, if warranted, to prosecute accordingly. High-ranking officials and lawyers who distort legal reasoning to justify or authorize war crimes can, and should, be held legally accountable. Because the ban on torture is absolute, we have a legal obligation to investigate torture and all of those who may have been party to its use."

Nadler, who has been investigating U.S. torture policy, and who called Mr. Yoo and other Bush administration officials before his Subcommittee as part of that investigation, released the following statement:

"I am very disappointed that, at the end of this lengthy process, we are now left with apparent confusion within the Department of Justice regarding the appropriate standards of conduct for its attorneys. In OPR's view, attorneys Yoo and Bybee committed "misconduct" worthy of referral for state disciplinary action. In Mr. Margolis's view, they exhibited only "poor judgment." Setting aside the disagreement over what state ethics rules require, everyone agrees that the legal advice provided by attorneys Yoo and Bybee — advice that was used by the Bush administration to justify waterboarding — was seriously flawed and did not meet the Department of Justice's own standards of conduct. This should never have happened, and I will continue working to ensure that the appropriate corrective steps are taken so that it does not happen in the future.

"At the same time, the relevant officials in the states where attorneys Yoo and Bybee are licensed to practice law have authority to determine whether further investigation or disciplinary action is warranted. These states do not need a referral from the Department of Justice in order to interpret and enforce the standards of professional responsibility and ethics against their members.

"For that reason, I am forwarding to the relevant state bars copies of the OPR reports, and other materials, and asking that they review the documents to determine whether, under their laws, rules and procedures, any further action is warranted.

"The perversion of our laws and treaty obligations in order to support an illegal campaign of torture is a stain on the honor of our nation. I am proud that President Obama has returned this nation to its longstanding commitment never to engage in torture. This policy dates back to the revolutionary war when General Washington forbade the mistreatment of prisoners.

“Nonetheless, it is important that those who committed these misdeeds be made to answer for their actions. That has not yet happened, and troubling questions remain – including the circumstances surrounding the apparent deletion of most of Mr. Yoo’s email records – regarding the role of high-ranking administration officials and the extent of the back-and-forth that occurred between those individuals and the lawyers crafting the legal advice that cleared the way for waterboarding.

“As before, it is imperative that the Department of Justice ensure that a special counsel fully investigates commission of torture, to follow the trail wherever it goes, and, if warranted, to prosecute accordingly. There is no legal or moral reason to insulate those who authorized the torture of detainees. High-ranking officials and lawyers who distort legal reasoning to justify or authorize war crimes can, and should, be held legally accountable. Because the ban on torture is absolute, we have a legal obligation to investigate torture and all of those who may have been party to its use.”